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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re JESUS M., a Person Coming Under
the Juvenile Court Law.

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Plaintiff and Respondent,

v.

ALMA M.,

Defendant and Appellant.

F063884

(Super. Ct. No. JD126071)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Kern County. Jon E. Stuebbe,
Judge.

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Levy, J., and Detjen, J.

Alma M. (mother) appealed from a December 2011 order terminating parental rights (Welf. & Inst. Code, § 366.26) to her then nine-month-old son, Jesus.¹ After reviewing the entire record, mother's court-appointed appellate counsel informed this court she could find no arguable issues to raise on mother's behalf. Counsel requested and this court granted mother leave to personally file a letter setting forth a good cause showing that an arguable issue of reversible error did exist. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844.)

Mother has since submitted a letter in which she claims there is an arguable issue. She contends that the superior court abused its discretion at the termination hearing by denying her request for custody, based on alleged changed circumstances. Having reviewed mother's claim and the appellate record, we conclude mother's contention is not arguable. (*In re Phoenix H.*, *supra*, 47 Cal.4th at p. 844.)

PROCEDURAL AND FACTUAL HISTORY

Jesus is mother's 11th child. Starting in 2006, most of mother's children had been removed from her custody due to neglect brought on by her substance abuse. Six children were eventually freed for adoption when mother failed at reunification services.

While pregnant with Jesus, mother was enrolled in substance abuse counseling, but she continued to use methamphetamine. As recently as two weeks before the child's birth, mother tested positive for methamphetamine. Consequently, respondent Kern County Department of Human Services (department) detained the child upon his birth in February 2011 and initiated the underlying juvenile dependency proceedings based on the foregoing facts.

The superior court exercised its dependency jurisdiction (§ 300, subs. (b) [parental neglect] & (j) [abuse or neglect of a sibling]) over the child. It later adjudged

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

the child a juvenile dependent, removed him from parental custody and denied mother reunification services on three alternative grounds. The court found by clear and convincing evidence, the following:

the court ordered termination of reunification services for the child's sibling or half sibling because mother failed to reunify with the sibling or half sibling who had been removed from mother and she had not subsequently made a reasonable effort to treat the problems that led to the sibling or half sibling's removal (§ 361.5, subd. (b)(10));

mother's parental rights over a sibling or half sibling of the child had been permanently severed, and mother had not subsequently made a reasonable effort to treat the problems that led to removal of the child's sibling or half sibling from mother (§ 361.5, subd. (b)(11)); and

mother had a history of extensive, abusive, and chronic use of drugs or alcohol and had resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought the child to the court's attention, or had failed or refused to comply with a program of drug or alcohol treatment described in a dependency case plan on at least two prior occasions, even though the programs identified were available and accessible (§ 361.5, subd. (b)(13)).

The superior court did order visitation to occur twice a month for one hour.

Having denied mother reunification services, the superior court set a hearing to select and implement a permanent plan (§ 366.26) for the child. Mother did not seek review of the superior court's setting order, despite receiving notice of her writ remedy under section 366.26, subdivision (l).

Prior to the permanency planning hearing, mother's attorney filed a request to change the court's order (§ 388). In it, counsel claimed changed circumstances warranted the court placing the child with mother subject to family maintenance services or ordering family reunification services for mother. Counsel further alleged family reunification would be better for the child because mother regularly visited and claimed a strong bond between herself and the child. Counsel attached no documentary evidence in

support of the request. Nevertheless, the court ordered a hearing on the request to coincide with the permanency planning hearing.

The department investigated counsel's allegations and reported to the court. Most notably, mother claimed to have completed substance abuse counseling, but did not have a certificate of completion. She attributed this to her inability to pay for her last drug test. She admitted some of her drug tests revealed she was using amphetamines, but she adamantly denied using drugs, except for high-blood pressure medication. However, according to the counseling program mother attended, she was "dropped from the program" and mother's description of events was "definitely not the full story." Because mother revoked the department's access to information from the program, it could not discuss the issue in detail with the department.

The department also reported that the child, who was then eight months old, had never resided with mother. The child had been in the same foster placement since soon after his birth and his foster family wished to adopt him. Mother consistently visited the child and their visits were "appropriate." She interacted well with him. The child, however, was unable to differentiate between mother and a friendly visitor. He also showed no signs of distress apparently at the end of visits when he left mother.

At the start of the combined hearing in December 2011, mother testified in support of the section 388 request.

Mother visited the child for one hour every other week. She played with the child, fed him, and, towards the end, put him to sleep. In her estimation, the child knew her. She wanted the child home with her because "a child should have a mom and a dad." Also, nobody could love a child the way a mother loves.

In addition, mother testified she participated in substance abuse counseling from December 2010 until June 2011 and completed every class during that period. She did not obtain a certificate of completion, but attributed that to her inability to pay for a last

drug test. She denied being dropped from the program. She did drug-test approximately 11 times. Her drug of choice was methamphetamine but she last used drugs in December 2010.

She did not have a sponsor nor did she continue to participate in Narcotics Anonymous. She did not have the time. She did believe substance abuse classes helped her deal with the desire to use.

After argument, the court denied the section 388 request. It found mother took some “minor steps” towards changing her circumstances, but the evidence was inadequate to support granting the petitions.

Having found clear and convincing evidence that the child was likely to be adopted, the court terminated parental rights.

DISCUSSION

An appealed-from judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is up to an appellant to raise claims of reversible error or other defect and present argument and authority on each point made. If an appellant does not do so, the appeal should be dismissed. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.)

Mother contends the court abused its discretion by denying her section 388 request for custody or reunification services. However, there can be no arguable claim of error on this appellate record. (*In re Phoenix H., supra*, 47 Cal.4th at p. 844.) First, there was conflicting evidence about whether mother’s circumstances in connection with her substance abuse had significantly changed.

In any event, by the time a child’s dependency has reached the permanency planning stage, a parent’s interest in the care, custody, and companionship of the child is no longer paramount. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*).) Rather, the focus shifts to the child’s needs for permanency and stability. In fact, there is

a rebuttable presumption that continued out-of-home care is in the best interests of the child. A court hearing a section 388 modification request at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

Here, mother did not introduce any evidence that the child's need for permanency and stability would be advanced by granting mother custody or reunification services. In addition, the child, who was less than one year old, had never lived with mother. His relationship with mother was limited to one-hour visits every other week. Albeit appropriate, those visits did not compel the court to grant mother the relief she sought.

DISPOSITION

This appeal is dismissed.